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ENFIELD ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING

September 26, 2011

A Regular meeting of the Enfield Zoning Board of Appeals was held on Tuesday, September 26, 2011 at the Enfield Town Hall, Council Chambers, 820 Enfield Street, Enfield Connecticut. Chairman Peter Yarum called the meeting to order at 7:03 p.m.

PRESENT: Peter Yarum, Chairman
Frank Alaimo, Alternate
Brittany Christensen
Maurice Larosa
Charles Mastroberti
Mary Ann Turner, Secretary

ALSO PRESENT: Virginia Higley, Zoning Enforcement Officer
Susan Berube, Recording Secretary

2. ROLL CALL: Present were: Chairman Yarum and Board members Alaimo (alternate), Christensen, Larosa, Mastroberti and Turner. Also present were Virginia Higley, ZEO and Susan Berube, Recording Secretary.

3. APPROVAL OF MINUTES – July 28, 2011 Regular Meeting: A motion was made by Ms. Turner and seconded by Mr. Mastroberti to approve the minutes of the meeting of July 28, 2011 as presented. Vote was 4-0-1(Larosa).

4. CORRESPONDENCE / STAFF REPORT: The following correspondence was received:

- Letter dated 09/23/11 from Town Attorney Kevin Deneen to Mr. & Mrs. Robert Robbins
- Letter dated 09/15/11 from Chairman Peter Yarum to Enfield Town Council regarding Zoning Fines Ordinance
- Memo dated 08/26/11 from Town Attorney Kevin Deneen regarding his review of the Fines Ordinance
- Summer, 2011 issue of CT Federation of Planning & Zoning Agencies
- Albany Law School Research Paper #46 of 2010-2011 regarding Regulation of Backyard Chickens

Ms. Higley reported that she recently attended the Council Of Chairs meeting. The Town Council had no issues with ZBA but did have concerns over the minutes of the

PZC, building permits and the overall performance of Building, Planning and Economic and Community Development Departments.

Mr. Warren's goal is to have employees work better, faster and smarter.

Ms. Higley stated that she will find out when the Fines Ordinance is to be put on the Council's agenda and notify ZBA members.

5. PUBLIC HEARING(S) / PROCEDURAL & POLICY STATEMENTS BY CHAIRMAN: Chairman Yarum explained the procedures for the public hearing and the circumstances in which a variance can be granted.

6. READING OF THE LEGAL NOTICE: The legal notice for ZBA 2011-07-01 was read by Ms. Turner.

7. NEW BUSINESS

ZBA 2011-07-01 – Aristidis Zaharis, Applicant & Owner, 58 Post Road, Map 54 / Lot 293, R-33 Zone, requesting a modification of required minimum land for farm animals from 3 acres to .906 acres (39,465.36 sq. ft.) - EZO Section 2.30 #33: Mr. and Mrs. Zaharis represented the applicant.

Mrs. Zaharis read a letter into the record which detailed the circumstances leading up to this application. The letter stated that Ms. Higley sent a violation letter in response to a neighbor's complaint about the Zaharis's chickens getting loose.

The Zaharis family was told that they had 30 days to resolve the issue. Mrs. Zaharis took exception to this, stating that if the family had a conventional pet, such as a dog or cat, the Animal Control Officer would have come, not the Zoning Enforcement Officer.

Mrs. Zaharis stated that she does not have a farm and the regulations do not state that chickens are not allowed in residential areas.

She went on to state that others in the neighborhood have chickens, goats and other animals and she feels that the rules should be for everyone, not just her.

She is requesting to keep 5 ducks as family pets.

Mr. Zaharis stated that the chickens and ducks were purchased one and a half years ago and he has invested \$1,000 in the coop and fencing. These costs will not be recouped by selling eggs.

At the time that he purchased the chicks, he spoke with his neighbors who said they had no problem with his family having the fowl. In fact, the child of the neighbor who later complained played with the chicks.

Mr. Zaharis went on to state that he asked the ZEO if he could take care of this issue when he returned from Greece. He was told that he had to submit an application to ZBA.

Through some misunderstanding of the time frames for ZBA and the application, he ended up butchering his chickens prior to his trip to Greece.

He and his wife are trying to teach responsibility to their children, by raising the chickens and ducks.

Mr. Larosa noted that he leases chicks and cows for his child's 4H program because he doesn't have the required minimum 3 acres, as written in the State Statutes.

Mrs. Zaharis stated that you need a minimum of 3 acres for a farm. She does not have a farm.

Chairman Yarum agreed, and noted that because she does not have a farm, or the required minimum acreage, chickens are not allowed. A special permit cannot be given.

Mr. Larosa also noted that a hardship has not been shown. The applicant had written "financial and children" but Chairman Yarum stated at the beginning of the public hearing that a variance cannot be granted for financial hardships, or those that are self imposed.

Mr. Zaharis agreed that his hardship is not financial but he did lose money.

Mr. Larosa also noted that a variance is not granted to a person; it is granted to the property. Who ever owns the property after this family will be able to have these animals, forever.

Mr. Zaharis asked if ducks are farm animals, and asked what category snakes, pigs and other animals fall under when they are pets.

Mr. Larosa replied that the ZBA cannot be specific as to what the "farm animal" is in a variance.

He also noted that the applicant created a pond on the property, which could be a breeding ground for mosquitoes.

Chairman Yarum returned to the subject at hand.

Mrs. Zaharis stated that she felt that the Board had already made up its' mind and the ducks would not be allowed.

Ms. Turner pointed out that the ZBA can only make a decision based on 2 things – is it a self imposed hardship or a property hardship. The Board has a very small window of operation; there is no "wiggle" room.

She added that she visited the property on Sunday.

Mrs. Zaharis stated that the ZEO should be enforcing the rules for everyone.

Chairman Yarum explained that the ZEO responds to complaints. It is not her job to look for violations.

Ms. Higley stated that she has had calls on several properties with chickens but none have come before the ZBA.

The town has 45,000 residents. Ms. Higley is not allowed to enter a property so unless she gets a complaint or can see the violation from the road, she cannot do anything.

Mr. Alaimo asked if the ZBA is allowed to grant a variance with conditions, such as is allowed for PZC and IWWA.

Chairman Yarum replied that the ZBA is not allowed to do this.

Chairman Yarum asked the purpose of the ducks.

Mrs. Zaharis replied that their purpose is to teach the children that it is not easy to raise animals. The family does not sell the eggs or meat.

At this time the hearing was opened for public comment. No one in the audience came forward to speak for or against this application.

Chairman Yarum read an email dated 09/26/11 from Charlotte Sferrazza stating that she sees no harm in allowing a small amount of fowl as long as they are well cared for and kept healthy.

The hearing was closed by Chairman Yarum at 7:42 p.m.

For discussion purposes, a motion was made by Mr. Larosa and seconded by Ms. Turner to approve ZBA 2011-07-01.

Mr. Mastroberti asked what would be done if someone complained about wild ducks on a pond.

Mr. Larosa noted that he had some wild ducks on his pool cover earlier in the year but they left.

Ms. Higley stated that she has also had the same situation. In this case, however, the pond is inside a fenced enclosure. Wild ducks can fly out, the domestic ducks cannot.

Mr. Mastroberti then asked about removing the fence.

Ms. Higley responded that the animals are domestic and would go onto neighboring properties, in the road, or be killed by predators.

She added that until the regulations are changed, she has to go by the rules. She is working on having them changed.

Mr. Larosa agreed that the Board is stuck with the rules. He would like to do something but the rules do not allow for this.

Mr. Mastroberti agreed.

Discussion then ensued about the difference between calling them farm animals instead of pets.

Ms. Higley replied that poultry is still considered a farm animal even if the eggs are consumed by oneself.

She added that poultry is listed in the State Statutes as livestock.

She also noted that the PZC has twice stated that chickens, geese and ducks are not allowed in the Town of Enfield on under three acres.

She added that if the Board says it is okay to have ducks as pets, it is setting precedence.

Chairman Yarum agreed and noted that the applicant has stated several times that these are pets, not farm animals.

Mrs. Higley replied that others have stated the same thing, naming them and not selling the eggs but it is not allowed on less than three acres.

Mr. Larosa noted that the regulations don't list chickens under livestock.

Ms. Turner pointed out that since they are not a farm, they cannot have ducks. If it is not written, they cannot have them.

Chairman Yarum stated that although he doesn't agree with the regulations, the applicants do not have 3 acres so they don't qualify.

Ms. Higley suggested that the ZBA send a letter to the PZC. She is already working with members of the PZC to lower the requirements.

A second motion was made by Mr. Larosa and seconded by Ms. Christensen to table the first motion until PZC has an opportunity to review the ordinances related to this application and respond back to ZBA. Vote was 5-0-0.

ZBA 2011-09-01 – Leonard P. Guerriero, Applicant/Owner, 40 O'Hear Avenue, Map 41 / Lot 34, R-33 Zone, requesting an appeal of Order of Decision of Zoning Official for container storage and lot coverage – EZO Sections 3.30.14 & 4.10.2H: The legal notice for this hearing was read by Ms. Turner.

Mr. Alaimo noted that if this application is continued to another meeting and he is seated as a full voting member for that meeting, he will need to recuse himself from this application.

Mr. Buster Guerriero of 42 Spier Ave. was present to represent his son, Leonard Guerriero.

Ms. Higley explained that the application is for container storage, lot coverage and a membrane covered temporary garage.

Mr. Guerriero has more than the maximum allowed 20% lot coverage without the containers and garage.

Chairman Yarum stated that the applicant needs to provide proof that the containers are allowed. The letter provided this evening to the Board by Mr. Guerriero, Sr. is not proof.

Ms. Higley reported that she spoke recently with Mr. Tony DiPace, previous chairman of the PZC. The younger Mr. Guerriero had discussed the containers with PZC when Mr. DiPace was chairman.

The containers were present prior to 2006.

Ms. Higley stated that she looks at it as accessory structures, which are only allowed in the back of the house. These containers are located on the side of the house.

This is in a residential district, not business. When a person does have a container it is only allowed for a certain period of time. A permit is required for 30 day storage; 90 day storage would require PZC approval.

The ZBA needs to decide if the container is a container or temporary structure.

Regarding the garage, it is located in the front of the property. If it to be allowed, it is definitely over the 20% maximum lot coverage.

Chairman Yarum asked if a building permit was pulled for everything.

Ms. Higley replied that she has not been on the property so she doesn't know if everything has a permit but the 2 garages do have building permits.

Chairman Yarum asked about the gazebo in the front yard.

Ms. Higley replied that the gazebo does have a variance.

Members discussed tabling this application until more information can be received from staff regarding building permits.

Aerial photos should help determine what buildings/containers are present.

Mr. Larosa noted that the applicant states that he has been taxed on the buildings.

Ms. Higley pointed out that this does not mean that the applicant had a building permit for them.

Ms. Turner stated that she feels that the focus should be on the temporary garage.

Mr. Larosa wants to know if the storage containers were present before the garage was permitted.

A motion was made by Mr. Larosa and seconded by Mr. Mastroberti to table further discussion on this public hearing until the Board's next regular meeting on October 24, 2011, so that Staff has the opportunity to gather further information and for the applicant, Mr. Leonard Guerriero, to have the opportunity to be present.

Chairman Yarum asked Ms. Higley to find out how many permits were pulled and how many have been approved.

He also noted that it will probably be the consensus of the Board that the storage boxes are grandfathered if they are containers. Or are they accessory structures? Once this is determined, the 20% coverage rule will be determined as well.

At this time, Mr. Frank Dubish of 42 O'Hear Ave. came forward with his concerns.

He stated that the subject lot is 100' x 250'. There are 5 garages and an apartment upstairs which is supposed to only be a storage area.

There is a garage off the end where the temporary one is.

The applicant built a dormer on a roofing permit.

Mr. Dubish stated that his main concern is snow storage. The applicant has no room on his property for snow storage and has dumped it onto the vacant lot, #38 and onto Lynch Terrace, in the rear of the applicant's property.

The front of the property has high snow piles and the Town's crew can't plow properly because of where this snow is piled. If there was not so much lot coverage, there would be more room on the property for snow storage.

Mr. Dubish also complained of the noise made by the bobcat used on the property to move snow. The applicant puts snow in front of other peoples' property and covers catch basins so they won't take water in the winter. This has been a real problem and Mr. Dubish hopes that the ZBA will take this information into consideration.

Mr. Dubish provided photographs and aerial photos which were reviewed by the Board members.

8. OTHER BUSINESS – Board members briefly discussed the Fines Ordinance. There was confusion among the members as to whether or not the document

provided is a draft or the final version of the ordinance. It contains numerous errors.

Ms. Turner stated that she feels that there should have been one more review made before this was submitted to the Town Council.

Mr. Larosa asked that if is not yet on the Council's agenda, that the Board requests that Mr. Duren, Chairman of the PZC, pull the document back for another review.

Ms. Higley will double check to make sure that she received the correct version of the ordinance.

Chairman Yarum asked for a meeting with the PZC regarding the ordinance if it is not already on the Council's agenda.

9. EXECUTIVE SESSION – NONE

10. ADJOURNMENT: A motion was made by Mr. Larosa and seconded by Ms. Turner to adjourn the meeting at 8:35 p.m. Vote was 5-0-0.

Respectfully Submitted,

MaryAnn Turner, Secretary